committed a breach of trust for not taking fresh action for possession against the lessee but they have not shown in what way the defendants were wrong. All that the plaintiffs have done is to labour on the fact that the defendants had in July, 1957, promised to take fresh proceedings against the lessee and had failed to do so in spite of pressure from the plaintiffs and on the fact that the new trustees have taken action against the lessee for possession. Now, is that sufficient for the court to find that there is a breach of trust? I do not think so. There is no evidence even that the grounds on which the present trustees relied on to claim possession could have been relied on by the defendants.

The plaintiffs finally say that the defendants have committed a breach of trust by failing to have a reasonable rent fixed by the Rent Conciliation Board. Now, there is no evidence what was the reasonable rent that could be fixed by the Rent Conciliation Board. The court in Suit No. 959 of 1955 had found that the standard rent was $500 per month. The plaintiffs have not even touched on the question whether an application to the Rent Board would result in a higher rent being fixed. On the evidence that I have before me I am unable to say that there is a breach of trust.

There is as yet no evidence that the estate of the testator has suffered and is suffering heavy loss as a result of the defendants' failure to take action for possession. We will not know whether the testator's estate has suffered loss until the result of the suit brought by the new trustees against the lessee for possession is known. If the suit is successful then only can the plaintiffs be able to say that as a result of the neglect of the defendants in not taking action against the lessee for possession the testator's estate has suffered heavy loss. In my view it is premature to bring this complaint before the Court.

There will be judgment for the plaintiffs accordingly.

Judgment for the plaintiffs.

Solicitors: *Mallal & Namazie; Rodyk & Davidson.*

BRITISH & MALAYAN TRUSTEES LTD. v. HAPPY WORLD LTD.

[O.C.J. (Chua J.) September 19, 1963]

[Singapore — Suit No. 934 of 1961]

Landlord and Tenant—Controlled premises—Buildings therein let out by tenant to occupants—Premises locked by tenant for 3½ hours—Whether occupants had exclusive possession—Licence or tenancy—Test of.

Landlord and Tenant—Tenant receiving rent exceeding 110%—Using premises as common gaming house—Unlawful purpose—Breach of tenancy obligation—Control of Rent Ordinance (Cap. 242), ss. 15(1)(d) & (g).

In 1936, the trustees of the estate of Tan Tye deceased leased a piece of land to G.L. for a term of 20 years and 10 months as from August 5, 1936 at a rent progressing from $100 per month to $800 per month. In the same year the said G.L. assigned the lease to the defendants who erected a number of buildings on the said land with the permission of the trustees. The said lease expired on May 31, 1957 but the defendants remained in possession, under the protection of the Control of Rent Ordinance.

The various buildings on the land now known collectively as the Happy World are occupied by various persons who pay a total sum of $17,000 to the defendants. In respect of the occupants the defendants issued printed receipts for rents received prior to August 1955 but after that date began issuing receipts for fees for temporary occupation as licensees.

The Happy World has four gates, three of which are locked up at midnight and the 4th at 12.30 a.m. If there are late performances, the 4th gate is locked up at 2.30 a.m. after which no one is allowed to remain in the park. One gate is opened at 6 a.m.

From June to August 1957, one R hired a hall (the 'B' Hall) from the defendants in which he operated a game called "Skill-Ball" otherwise known as Lotto. The said hall was raided by the police on August 13, 1957 when 67 persons were arrested. Subsequently all of them pleaded guilty and in the result one person was convicted of assisting in the management of a common gaming house and was fined $500 and the other 66 persons were convicted of playing in a common gaming house and fined $10 each.

The plaintiffs, the present trustees, sought possession on the grounds that (1) the defendants have sublet a part of the premises and they receive in respect of such subletting, rents which exceed in the aggregate 110 per cent of the recoverable rent paid by them. Accordingly, section 15(1)(g) of the Control of Rent Ordinance applies; (2) the defendants in contravention of section 15(1)(d) of the Control of Rent Ordinance have used or have permitted the use of the said premises for illegal purposes; (3) the defendants have been and are in breach of an obligation of the tenancy and, accordingly, section 15(1)(b) of the Control of Rent Ordinance applies.

Held: (1) the occupants of the stalls and buildings had exclusive possession;

(2) these occupants were tenants and not licensees;

(3) the defendants have received from the subtenants more than 110% of the rent paid by them;

(4) 'B' Hall was a common gaming house within the Common Gaming Houses Ordinance and therefore the persons who operated the game of Skill Ball or played it were guilty of offences under the Ordinance;

(5) accordingly, the user of the hall in furtherance of an unlawful purpose came within section 15(1)(d) of the Control of Rent Ordinance;

(6) the plaintiffs are entitled to an order for possession as claimed and costs.

Cases referred to:—

(1) *Waller & Son, Ltd.* v. *Thomas* [1921] 1 K.B. 541.

(2) *S. Schneiders & Sons Ltd.* v. *Abraham* [1925] 1 K.B. 301.

The following cases were also cited in argument for the plaintiffs: *Toh Whye Teck* v. *The Happy World Ltd.* [1953] M.L.J. 171; *Woon Guan Chin* v. *Lim Sian Poon* [1954] M.L.J. 184; *Booker* v. *Palmer* [1942] 2 All E.R. 674; *Macroft Wagons Ltd.* v. *Smith* [1951] 2 K.B. 496; *Cobb* v. *Lane* [1952] 1 All E.R. 1199; *Errington* v. *Errington* [1952] 1 K.B. 290; *Facchini* v. *Bryson* [1952] 1 T.L.R. 1386; *Grand Junction Co. Ltd.* v. *Bates* [1954] 2 Q.B. 160; *Lim Siew Neo* v. *Pang Keah Swee* 2 M.C. 219; *Odhermal* v. *Tan Cheng Lock & Anor.* [1953] M.L.J. 43; *Wong Miew Cheong* v. *Loh Fatt* [1961] M.L.J. 219; *Cresswell* v. *Hodgson* [1951] 2 K.B. 92; *Joel* v. *International Circus and Christmas Fair* 124 L.T. 459; *Choo Siew Koon & Anor.* v. *Regina* [1952] M.L.J. 138.

The following cases were also cited in argument for the defendants: *Close* v. *Theatrical Properties Ltd.* [1936] 3 All E.R. 483; *Rendall* v. *Roman & Another* 9 T.L.R. 192; *Runme Shaw* v. *Habibullah* [1950] M.L.J. 111; *Smith & Son* v. *Assessment Committee of Hammersmith* 9 Q.B.D. 585.

ACTION.

N. A. Mallal for the plaintiffs.

C. H. Smith for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiffs' claim against the defendants is for recovery of possession of two pieces of land at Geylang comprised in Lots 354 [4] and 356 [1] of Mukim XXV, together with all the buildings erected thereon.

The facts are briefly these. The plaintiffs are the trustees of the will and the estate of Tan Tye deceased, (who I will refer to as the testator), having been so appointed by the court on the 24th February, 1961. The testator's estate is the owner of Lots 354 [4] and 356 [1] (which I will refer to as the said land). By an indenture of lease dated the 5th August, 1936, the then trustees leased the said land to George Lee for the term of 20 years and 10 months, as from the 5th August, 1936, at a progressive rental commencing at $100 per month and culminating in a rental of $800 per month.

By the said indenture the lessee covenanted, *inter alia*, that he,

(1) "will pay all sums payable for supply of water and gas and electric energy and all such assessments, rates and taxes as shall be rated, charged or assessed on the said land, or the buildings or structures which are now or shall or may during the said term be erected thereon."

(2) "will comply with all Government, Municipal or Police regulations and requirements affecting or relating to the said land, buildings or structures or any buildings or structures which shall be hereafter erected on the said land, or the use thereof, or any trade or business carried on on the said land or premises."

(3) "will at the determination of the said term peaceably and quietly leave, surrender and yield up unto the lessors the said land with all buildings and structures thereon, provided however, that the lessee shall be at liberty to remove from the said premises all plant, machinery and apparatus installed by him, whether fixtures or not, making good all damages caused to the said land, buildings or structures in such removal."

By the said indenture the lessors covenanted, *inter alia*, to permit "the lessee at the lessee's expense and without any liability on the part of the lessors to compensate the lessee therefor, to construct or erect any buildings or structures on the said land, subject to the lessee obtaining the approval of the Municipal authorities and complying with all laws and regulations relating thereto, and to alter any buildings or structures for the purpose of complying with any Government or Municipal requirements."

By an indenture dated the 5th October, 1936, the said George Lee assigned all his rights under the said lease to the defendant company. George Lee was and is still a director of the defendant company. In pursuance of the permission granted to the lessee, the defendants erected or caused to be erected on the said land a number of buildings such as restaurants, a dance hall, a stadium, cinemas, stalls, halls and other buildings for the purposes of their business of an amusement park, which they carried on and still carry on, partly on the said land and partly on other lands belonging to the defendants and to government, and which since its inception has been and is still known as "The Happy World Amusement Park".

The said term of 20 years and 10 months expired on the 31st May, 1957.

By judgment dated the 5th March, 1958, in Suit No. 989 of 1955*, in which the defendants were the plaintiffs and the Estate & Trust Agencies (1927) Ltd., the then trustees of the will of the testator, were the defendants, the court declared that the said land, together with the buildings erected thereon, constituted "premises" within the definition clause of the Control of Rent Ordinance, 1953, and that the standard rent of the said premises was $500 per month. In the result the then trustees had to refund to the defendants the sum of $10,800 being the excess rent collected. The defendants have since been paying the rental of $500 per month.

Those are the brief facts.

The plaintiffs claim possession on three grounds, namely:

(1) The defendants have sublet a part of the premises and they receive in respect of such subletting, rents which exceeds in the aggregate 110 per cent of the recoverable rent paid by them. Accordingly, section 15(1)(g) of the Control of Rent Ordinance applies.

(2) The defendants in contravention of section 15(1)(d) of the Control of Rent Ordinance have used or have permitted the use of the said premises for illegal purposes.

* [1958] M.L.J. 155.

(3) The defendants have been and are in breach of an obligation of the tenancy and, accordingly, section 15(1)(b) of the Control of Rent Ordinance applies.

I will now deal with the first ground.

As I have mentioned, during the period that the defendants have been in occupation of the said land they have erected a large number of buildings on the said land. The cabaret is known as the Happy World Cabaret and one of the restaurants is called the Tai Tong Restaurant. The cabaret is a solid building. The Tai Tong Restaurant is a three-storey solid building. It is not disputed that the defendants collected and are collecting from the persons occupying the various stalls, cinemas, restaurants and other buildings a total sum of nearly $17,00 per month. The plaintiffs allege that these persons are in occupation as sub-tenants of the defendants. The defendants, on the other hand, contend that they are licensees.

It is admitted by the defendants that prior to August, 1955, they issued printed receipts which were in Chinese and English, in this form: (I will refer to this as the old type receipt).

" Stall-holders are forbidden to reconvert or change the trade of their stall without permission other than which they had been originally let.

(Chinese Characters)

(Chinese Characters)

OFFICIAL RECEIPT No.

(Chinese Characters)

THE HAPPY WORLD LTD., SINGAPORE

(Chinese Characters)

Singapore.....19

(Chinese Characters)

Received from.....

(Chinese Characters) (Chinese Characters)

the sum of Dollars.....being lighting and maintenance for Stalls Nos..... .....

for the period of.....subject to conditions printed at the foot and back hereof.

(Chinese Characters)

For THE HAPPY WORLD, LTD.

.....

$———— .....

CONDITIONS IN CHINESE

(Back of receipt)

CONDITIONS HEREIN BEFORE REFERRED TO:

1. No goods or food of inferior quality shall be exhibited for sale and the management of the Park will be entitled to prohibit the sale of any article in the Park without assigning any reason therefor.

2. *GAMBLING* shall not be permitted and the management of the Park shall be entitled to prohibit any game which, in the opinion of the management infringes the gaming law of this Colony.

3. The tenancy shall be monthly and may be terminated by either party giving a full month's notice.

4. No sub-letting of stalls are allowed unless sanctioned by the management in writing.

5. A deposit equivalent to one month's rent must be paid and the same shall not be withdrawn or used to set off against arrears of rent unless and until the tenant gives up the tenancy of the stall.

6. All rents are payable in advance.

7. When a deposit is being made for a stall and same is not occupied within one calendar month the deposit money then is treated as forfeited.

8. Should any stall holder or his employee,

(a) infringe either condition 1 or 2.

(b) be convicted of disorderly conduct in the Park.

(c) be convicted of causing hurt or of any other crime of violence in the Park.

(d) conduct himself or his business in a manner detrimental to the welfare or interest of the Park.

(e) or if any property in the Park be seized in execution under a Writ of Seizure and Sale issued by any Court, then the Management shall be entitled forthwith to terminate the tenancy and re-enter into occupation of the stall.

(f) a stall found closed continuously for a period of one week without any satisfactory reason given in writing will be taken possession of by the Management. "

It is not disputed by the defendants that the Chinese characters in the receipt above the English words "Official Receipt" read "Rent Receipt" and the Chinese characters above the words "the sum of Dollars" read "Rent Money" and that the heading of the conditions in Chinese reads "The terms of tenancy".

It is also admitted by the defendants that after August, 1955, they issued a new type of printed receipt in English and Chinese in this form:

"OFFICIAL RECEIPT No.....

(Chinese Characters)

HAPPY WORLD LIMITED, SINGAPORE, 14.

DATE:

TEMPORARY OCCUPATION LICENCE

Permission is hereby granted to..... to utilize without creation of any tenancy STALL No. .....in the Happy World Amusement Park for the month of.....only at his/her own risk and subject to conditions printed on back hereof and we hereby acknowledge receipt of the sum of Dollars .....being fee thereon.

HAPPY WORLD LIMITED.

$———— .....

Cashier. "

Similar conditions, which were on the old type receipt, are set out on the reverse of this new type receipt.

To substantiate their claim the plaintiffs called two witnesses. The first was Eng Wee Soo, who was the managing director of the Happy Cabaret Co. Ltd. which carried on business of cabaret and dance hall in the cabaret building at the Happy World Amusement Park from 1953 to 1956. His evidence was to this effect. The Happy Cabaret Co. Ltd. rented the cabaret building from the defendants in January, 1953. The rent was $6,500 per month payable in advance and it was a monthly tenancy. The old type receipts were issued by the defendants and sometime later the words "lighting and maintenance" appearing on the printed receipts were struck out and the word "rent" inserted in handwriting. In addition to the rent the company also paid to the defendants an average of $400 per month for electricity supplied to the cabaret. From June, 1955, to August, 1955, the company were unable to pay the full rent and they paid to the defendant $200 per day and the defendants issued receipts which stated that the payment was "to account against rent". The evidence of Eng Wee Soo which I have set out above is not disputed by the defendants except that the defendants maintain that there was no tenancy but only a licence.

The second witness was Ow Lun the manager of the Tai Tong Restaurant. His evidence was to this effect. Tai Tong Restaurant carried on business in the Park before the war. In 1945 he and six others formed a partnership to run the restaurant under the name of Tai Tong Restaurant (which I will refer to as the restaurant). They rented the building from the defendants. The terms of tenancy were discussed with George Lee. The building at that time was an empty three storey building and it was agreed that the restaurant was to repair the building, put up partitions and furnish the premises and that the rent was to be $500 per month for six months, and thereafter $1,000 per month. Repairs were done and partitions were put up by the restaurant at a cost of $20,000, and the restaurant spent another $8,000 to $9,000 to furnish the premises. A deposit of $3,000, being six months rent, was paid to the defendants and the restaurant business commenced on the 1st December, 1945. In May, 1946, the restaurant made a further deposit of $1,000. In August, 1946, the rent was increased to $1,100 per month and the restaurant is still paying this rent in respect of the main building. In addition to the rent the restaurant paid to the defendants 15 cents per unit for electricity supplied to the restaurant. In 1951 the restaurant building was extended. The extension was carried out by the defendants but the cost, amounting to $2,450, was paid by the restaurant. The restaurant then paid an additional sum of $450 per month rent for this additional space. In 1952 an agreement was entered into between the defendants and the restaurant. Under this agreement the restaurant installed an air-conditioning unit, at a cost of over $70,000, and a generating plant, at a cost of about $30,000. The restaurant maintains the air-conditioning unit and the generating plant. In 1953 the restaurant built a new building next to the main building, at a cost of $20,000, which is used as a kitchen and store. The rent of the premises however was not increased. In December, 1954, the partnership was converted into a limited liability company known as the Tai Tong Restaurant Ltd. The restaurant is at present paying a rent of $1,550 per month to the defendants. The first time he observed that the defendants issued receipts in the new form was in 1961. In May, 1961, business was bad and he wrote a letter on the 18th May, 1961, to the defendants asking them for a reduction in the rent and on the 31st July, 1961, the defendants replied "We regret to inform you that your request for reduction of licence fee cannot be granted." He then looked up the rent receipts and sought advice from a friend and on the 26th September, 1961, the restaurant wrote to the defendants the following letter:

> "We wrote to you requesting you to reduce our rent but you wrote to us on the 31st July 1961 informing us that our request for reduction of 'Licence Fee' cannot be granted.
>
> As we do not understand much English it has been pointed out to us only recently that there is difference between 'Rent' and 'Licence Fee' and we hasten to protest against your using the expression 'Licensee' where we are concerned. We have been your tenants since long before the Japanese War and you have always issued receipts for 'Rent' which we paid you every month. It has been brought to our notice that in the receipts which you have recently issued for rent you use the words 'Temporary Occupation Licence' and 'Licence Fee'. We object to these words being used in the receipts issued to us.
>
> We request you that in future when we pay you our monthly rent you must issue ordinary rent receipts as before. If you do not do this we will go and see lawyers but we do not wish to go and see lawyers and waste our time and money if you will do what is right and just. As you know, we have never agreed to become your Temporary Occupation Licensees."

The evidence of Ow Lun which I have set out above is not disputed by the defendants except that the defendants deny that the restaurant is a tenant.

It is the contention of the defendants that the Happy Cabaret Co. Ltd. and the Tai Tong Restaurant were not tenants but licensees because these two companies did not have exclusive possession of the premises occupied by them.

The defendants adduced the following evidence. The Happy World Amusement Park

operates under a licence issued under the Public Entertainment Ordinance and that licence contains conditions, one of which is "that no performance shall commence before 5 p.m. or continue after 12 midnight." There are four big gates leading to the Happy World Park. Three of these gates are locked up at midnight and the fourth at 12.30 a.m. and the lights are switched off unless there is an extension. If there are late performances at the cinemas or cabaret, three gates are locked up at midnight and the fourth gate is kept open till 2 a.m. or 2.30 a.m. Before the gates are locked the defendants' jagas would go round and see that no one remains in the Park. After all the gates are locked no one is allowed into the Park. One gate is opened again at 6 a.m.

It is submitted by the defendants that as the Park is locked up between 2.30 a.m. and 6 a.m. and the stall holders cannot go in and out during that period the stall holders did not have exclusive possession of the premises they occupy.

On the evidence that is before me I find the following facts. Although the Park itself does not function until 5 p.m. each day, nevertheless, the stall holders and their employees have free access into the Park after 6 a.m., and the general public have free access to the cabaret, the Tai Tong Restaurant, the Billiard Hall and the cinemas in the Park during the day before 5 p.m. The cabaret held tea dances in the afternoon before 5 p.m. every Saturday and Sunday. There is a side entrance to the Cabaret through which the public can get into the cabaret without going through the gates of the Park before 5 p.m. The Tai Tong Restaurant has a first class bar licence which allows it to sell liquor from 6 a.m. to 12 midnight and it commences business at 9 a.m. each morning. Five employees of the restaurant sleep on the premises every night, to look after the premises, which are locked up by the employees of the restaurant and the keys are held by the employees of the restaurant and not the defendants. At weekends the cinemas in the Park have matinee shows at 11 a.m. and they have also afternoon shows. The Billiard Hall operates from 10 a.m.

The evidence adduced by the defendants is that between 2.30 a.m. and 6 a.m. the occupiers of the stalls and buildings in the Park are excluded from the Park but that in my view does not necessarily mean that the occupiers do not have exclusive occupation. I have on the whole of the evidence that is before me come to the conclusion that the Happy Cabaret Co. Ltd. were, during the time that they occupied the cabaret, in exclusive possession of the cabaret building and that the Tai Tong Restaurant was and is in exclusive possession of the restaurant buildings.

A number of cases have been cited to me on the question whether the occupation of the Happy Cabaret Co. Ltd. and Tai Tong Restaurant was a tenancy or a licence. The principle that is laid down in these cases is that although a person who is let into exclusive possession is *prima facie* to be considered to be a tenant nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy.

It is submitted by the defendants that there was no intention to create a tenancy as some of the terms set out in the receipt are inconsistent with a tenancy, namely that the occupiers are forbidden to do a number of things and the defendants can take possession if a stall is found closed continuously for a period of one week without any satisfactory reason being given in writing. The plaintiffs on the other hand pointed out that many of the conditions set out in the receipt are consistent with a tenancy.

I can see no substance in this submission of the defendants. All sorts of conditions and instructions can be imposed and accepted by an occupier and that does not make him a licensee.

I have on the whole case come to the conclusion on the evidence before me that the relationship of landlord and tenant was created by the defendants and the Happy Cabaret Co. Ltd. and Tai Tong Restaurant.

The next question for consideration is whether the defendants have received in respect of the subletting, rents which exceed in the aggregate 110% of the recoverable rent paid by them.

It is beyond doubt that the defendants have received, in respect of the subletting to the Happy Cabaret Co. Ltd. and the Tai Tong Restaurant, rents amounting to more than 110% of the rent paid by them to the plaintiffs.

In the result I find that the defendants have contravened section 15(1)(g) of the Control of Rent Ordinance.

I now come to the second ground on which the plaintiffs claim possession.

The following facts are not disputed. One Rooklyn hired "B" Hall from the defendants for the months of June, July and August, 1957, at $500 per month. "B" Hall is one of the buildings erected by the defendants on the land of the testator. Rooklyn started to use "B" Hall from 1st June, 1957, to operate a game which the operator called "Skill-Ball" but which is commonly known as Lotto. This game was being played from 1st June, 1957, to 13th August, 1957, in "B" Hall. On the 13th August, 1957, a party of police, headed by Inspector Chong Nee Foo, raided "B" Hall and arrested 67 persons. At first 25 of the 67 persons were charged with assisting in the management of a common gaming

house. Later the charge against 24 of the 25 persons was reduced to one of playing in a common gaming house. The 67 persons all pleaded guilty and in the result one person was convicted of assisting in the management of a common gaming house and was fined $500 and the other 66 persons were convicted of playing in a common gaming house and fined $10 each. The instruments and appliances for gaming, valued at $5,000, were confiscated.

The defendants deny that they have contravened section 15(1)(d) of the Control of Rent Ordinance. In their defence the defendants deny they have ever used or permitted the use of "B" Hall for illegal purposes.

The plaintiffs called two witnesses. The first was Inspector Chong Nee Foo, who gave the Court a description of how this game of "Skill-Ball" was played. He said that a player who won was given a voucher which entitled the player to play a number of games free or the player could exchange the voucher for cash. He said that he did not see cigarettes in the Hall. He said that this was a game of chance but in cross examination he agreed that "if a player is experienced he stands a good chance of getting a prize." The second witness was Osman bin Dawood, who was employed by Rooklyn and who assisted in the running of the game of "Skill-Ball". This witness said that the player who won could get either cigarettes or money as prizes. His evidence is also that this was a game of chance although he agreed that "by looking some players became cleverer than others."

Lee Thor Seng a director of the defendant company in his evidence said that he had seen the game of "Skill-Ball' played and that a successful player was given cigarettes and not cash and that he would say that there was a certain element of skill in the game. Lee Boon Hong, a Park Inspector employed by the defendants, said in evidence that it was part of his duty to go round the Park to see what games were being played and that he had seen the game of "Skill-Ball" played in "B" Hall on many occasions. He said that a successful player was given a packet of cigarettes as a prize and not cash.

The question for consideration is whether on the evidence before me anything illegal had taken place in "B" Hall.

The plaintiffs say that gaming had taken place in "B" Hall. The defendants say that there was no gaming as "Skill-Ball" was a game partly of chance and partly of skill and that it was not played for money.

On the evidence before me I find that gaming took place in "B" Hall and that "B" Hall was a "common gaming house" within the meaning of section 2 of the Common Gaming Houses Ordinance. The persons who operated the game of "Skill-Ball" and the persons who played in it were guilty of offence under the Common Gaming Houses Ordinance. It is an offence to play any game for money or money's worth in a common gaming house in Singapore no matter what the game is and irrespective of whether the game is of skill or of chance or mixed skill and chance.

The defendants contend that even if an illegality had taken place, "B" Hall had not been "used for illegal purposes" within the meaning of section 15(1)(d) of the Control of Rent Ordinance. I understand the argument of the defendants to be this. The act of illegality had taken place on one occasion and although there were many players it was one incident and one infringement and the act of illegality was an isolated incident. There are 300 stalls in the Park and in only one stall an illegality had taken place and it could be treated as an isolated incident. The Park was built for a lawful business and an isolated incident of illegality would not constitute user for an illegal purpose. The defendants in support of their contention refer to the case of *Waller & Sons, Ltd.* v. *Thomas.*[1]

I am unable to agree with the contention of the defendants that this was an isolated incident of illegality. It is true that the police raided "B" Hall only once and that only on one occasion were the players and operators arrested, charged and convicted, but gaming in this common gaming house had been going on every night from the 1st June, 1957, to the 13th August, 1957. Even if this was an isolated incident of illegality it was not an isolated instance of illegality in carrying out a lawful purpose as was the case in *Waller & Son* v. *Thomas supra.* Here the Hall itself was improperly used in furtherance of an unlawful purpose, and a single instance of such user is sufficient in my view to bring it within section 15(1)(d): *S. Schneiders & Sons Ltd.* v. *Abrahams.*[2]

The next question for consideration is whether the defendants permitted "B" Hall to be used for an illegal purpose. In their defence the defendants maintained that they had no knowledge of what was going on in "B" Hall but it is beyond doubt from the evidence of both Lee Thor Seng and Lee Boon Hong that the defendants had full knowledge of what was going on, and in my view the defendants had permitted "B" Hall to be used for an illegal purpose.

I find therefore that the defendants have contravened the provisions of section 15(1)(d) of the Control of Rent Ordinance.

As regards the third ground on which the plaintiffs claim possession I find that they have

not substantiated their allegation.

In the result therefore the plaintiffs are entitled to an order for possession as claimed and costs.

Order for possession as claimed.

Solicitors: *Mallal & Naamzie; Laycock & Ong.*

SHAIK ALI v. SHAIK MOHAMED

[C.A. (Thomson C.J., Barakbah J.A., and Gill J.) October 21, 1963]

[K.L. — F.M. Civil Application No. 1 of 1963]

Practice and Procedure—Judge ordering payment of security by certain date—Further order that in default appeal to "be dismissed"—Non-compliance with order—Payment out of security for costs—Certificate of non-satisfaction—Subsequent motion to dismiss the appeal with costs—Whether first order final or interlocutory—Meaning of "be dismissed" and "stand dismissed".

The respondent obtained judgment against the appellant, the applicant herein, and another person for the sum of $24,682.72 on January 4, 1954. The appellant lodged an appeal against this judgment after depositing $500 as security for costs. On May 31, 1954 on an application by the respondent it was ordered by Spencer Wilkinson J. sitting as a single judge of the Court of Appeal that the appellant should give security for payment of $5,453.80 (being taxed costs to be paid by the appellant to the respondent) and a further security in the sum of $1,000 (being costs of the appeal) on or before June 3, 1954. This period was extended by a further order to July 31, 1954 when the learned judge ordered that if the appellant should make default in giving such security by the date aforesaid the appeal should be dismissed with costs. The appellant did not comply with the said order. The respondent's solicitors then applied for the payment of the security of costs of $500 and by agreement with the solicitors for the appellant, $250 was paid towards the costs of the appeal and $250 towards reduction of costs in the court below. On December 7, 1954 the respondent's attorney applied for and obtained a certificate of non-satisfaction. Subsequently on December 3, 1959 the respondent filed an execution petition in the Court of the District Judge in South India for attachment and sale of the appellant's property. On February 19, 1960 the respondent applied by way of motion to the Court of Appeal for an order that the appeal be dismissed with costs. The affidavit supporting the motion stated that by the order of July 23, 1954 the appeal had only been stayed and no order had been made dismissing the appeal. On February 23, 1960 the Court of Appeal made an order dismissing the appeal. The respondent with this order proceeded with the execution petition in India and the District Judge there ordered attachment of the appellant's property on July 13, 1960. The appellant appealed against the Order of the District Judge to the High Court in Madras which adjourned the hearing to enable the appellant to make the present application to set aside the order dated February 23, 1960 on the ground that the order dated July 23, 1954 was a final order. The respondents contended that the order of July 23, 1954 was an interlocutory order because (i) if the security was paid the Court could hear the appeal and (ii) the order merely stated "be dismissed" and not "stand dismissed".

Held: (1) the order dated July 23, 1954 was explicit and there was no ambiguity about it. The words "be dismissed" and "stand dismissed" convey the same meaning;

(2) the respondent in applying for payment out of the security for costs and in obtaining a certificate of non-satisfaction from the Registrar had regarded the matter as at an end. The order dated February 23, 1960 should therefore be set aside.

Cases referred to:—

(1) *Whistler* v. *Hancock* (1878), 3 Q.B.D. 83, C.A.

(2) *Bozson* v. *Althrincham Urban District Council* [1903] 1 K.B. 547.

(3) *Ratnam* v. *Cumarasamy & Anor.* [1962] M.L.J. 330, 331.

COURT OF APPEAL.

K. A. Menon for the applicant.

D. L. L. Pickard for the respondent.

Cur. Adv. Vult.

Thomson C.J.: I have had the advantage of reading the judgment of Barakbah J.A.

I agree with the conclusions at which he has arrived and the process of reasoning by which I have arrived at them is not so different from his as to call for any lengthy statement.

I agree that the present application should be granted.

Barakbah J.A.: On the 4th day of January 1954, the plaintiff, who is the respondent in this application, obtained judgment against the defendant who is the appellant and another person by the name of M. S. Mohamed Sultan for the sum of $24,682.72 and costs. The appellant lodged an appeal against this judgment, after depositing $500 as security for costs.

On 31st May 1954, on the application of the respondent, Spencer Wilkinson J., sitting as a single judge of the Court of Appeal ordered the appellant to give, on or before the 30th June 1954, security for the payment of $5,453.80, being taxed costs to be paid by him to the respondent and a further security in the sum of $1,000, being costs of the appeal, also within the said period. The order further provided that unless the security was furnished on or before the said date, the appeal should be stayed.

On 23rd July 1954, again on respondent's application Spencer Wilkinson J. made a further order extending the period within which to provide the said security to 31st July 1954. The learned Judge further ordered that if the appellant should make default in giving such security by the date aforesaid the appeal be dismissed with costs.

The appellant did not comply with the said order and as alleged by the appellant the appeal stood dismissed on the 31st July 1954.